



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: CCO - 175000

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 15, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA regarding Child Care (CC), a hearing was held on July 13, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Early Care Administration (MECA) correctly determined the Petitioner was overpaid child care benefits in the amount of \$689.00 for the period of May 17, 2015 through May 31, 2015, and in the amount of \$517.76 for the period of July 5, 2015 through November 30, 2015.

NOTE: MECA / The Department of Children and Families objected to proceeding with the hearing on July 13, 2016, because the hearing notice was not forwarded to them and they needed to rush their preparation for the hearing. However, the Petitioner objected to rescheduling the hearing, because she had taken time off of work.

MECA's objection was overruled, since it is general policy that categorical hearings may only be rescheduled at the request of the Petitioner. In addition, MECA should not have suffered any undue prejudice, because the fact remains that MECA should be prepared for hearing and have all the evidence they need at the moment they issue the overpayment notice. If they do not have that evidence, they should not be issuing the overpayment notice. Further, MECA was allowed the additional time they needed to gather their exhibits and present their case.

ADDITIONAL NOTE: The record was held open for one day to give the Petitioner an opportunity to submit documentation of when she was working. Petitioner submitted:

Exhibit 22 – a May 29, 2015 e-mail string  
Exhibit 23 – a June 6, 2015 e-mail string

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED], Child Care Subsidy Specialist Sr.  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St., 2nd Floor, 200 East  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 9, 2015, the Petitioner completed an on-line ACCESS renewal, in which she reported working at [REDACTED], earning \$10.00 per hour. (Exhibit 5)
3. Petitioner had a job interview with [REDACTED] the morning of May 18, 2015. (Testimony of Petitioner; Exhibit 4)
4. Petitioner's last day of employment with [REDACTED] was on May 18, 2015. (Testimony of Petitioner.)
5. On May 26, 2015, the Petitioner contacted the agency to see if they had received her paystubs from [REDACTED]. Petitioner provided two pay stubs, one dated April 24, 2015 and one dated May 22, 2015. (Exhibits 6 and 20)
6. Between May 29, 2015 and June 6, 2015, the Petitioner and her boss at [REDACTED] engaged in a dispute concerning the child care she used on May 18, 2015, verifications that the Petitioner requested, and the accuracy of her May 22<sup>nd</sup> paycheck. (Exhibits 22 and 23)
7. On June 3, 2016, the Petitioner began working and earning income from [REDACTED]; she received her first pay check on June 19, 2015, for 61.75 hours of work. (Exhibits 2, 3, and Exhibit 18, pg. 3)
8. On June 25, 2015, the Petitioner contacted the agency to report she was no longer working at [REDACTED], and on June 26, 2015, the Petitioner went to the agency to report her new employment with [REDACTED]. (Exhibit 20)
9. On June 26, 2015, the Petitioner submitted a letter to the agency indicating her last day of employment at [REDACTED] was May 18, 2015. (Exhibit 9)
10. On April 12, 2016, [REDACTED] sent MECA an Employer of Verification of Earnings Form, indicating that the Petitioner's employment ended on May 15, 2015, and that her last check was dated May 22, 2015. (Exhibit 17)
11. On May 3, 2016, MECA sent the Petitioner two manual Child Care Client Overpayment Notices:  
Claim number [REDACTED], in the amount of \$689.00, for the period of May 17, 2015 through May 31, 2015.

Claim number [REDACTED], in the amount of \$517.76 for the period of July 5, 2015 to November 30, 2015.

(Exhibits 11 and 12)

12. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 15, 2016. (Exhibit 1)

### DISCUSSION

The county agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than is entitled to receive. Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3) See also *Wisconsin Shares Child Care Assistance Manual (Child Care Manual)*, §3.5.2, formerly §2.1.5.1 “All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client.” *Id.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving recovery of an alleged overpayment, the agency is the moving party, seeking to change the status quo. As such, the agency bears the initial burden to prove that it acted correctly. Once the agency makes a prima facie showing that it acted correctly, the Petitioner must produce evidence to rebut the agency’s case.

A parent/caregiver is eligible for child care services if he/she needs child care to work in an approved activity. *Child Care Manual*, §§1.4.8, et al; formerly §§ 1.5.0, et al., & 1.4.8. It is the agency’s contention that because the Petitioner was not working between May 17, 2015 and May 31, 2015, she was not eligible for those child care benefits.

“Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10-days of the change.” *CCM §1.15.1 Revised 12/10/2013; current citation is CCM§1.9.1.* This includes changes involving starting or ending an approved activity / job, increases in income of at least \$250, or decreases in income of \$100 or more. *CCM §1.15.2 Revised 12/10/2013; current citation is CCM§1.9.1.*

When changes are reported timely (but prior to adverse action), the overpayment period begins the first of the month, following the date of report. *CCM §3.5.1 formerly §2.1.5.1 Revised 12/10/2013*

However, when changes are not reported timely, the change becomes effective the actual date of the change and the overpayment period begins the first full week following the change. *Id.*

Petitioner indicates her employment with [REDACTED] ended on Monday, May 18, 2015. Although [REDACTED] submitted an employer verification of earnings form indicating that the Petitioner ended her employment on Friday, May 15, 2015, Petitioner has submitted documentation from that period in 2015, indicating that she was in a dispute with that employer regarding the hours she worked and what she owed for childcare.

This is a close call, but given that the Petitioner has submitted some documentation to corroborate her claim, and given that the dispute is over one day of employment, I find Petitioner’s testimony credible. In the absence of actual time cards from [REDACTED], it is found that the Petitioner’s last day of employment was May 18, 2015.

There is no documentation showing that the Petitioner reported her employment ending at [REDACTED], prior to June 26, 2015. As such, it is found that Petitioner did not timely report her employment ending.

Because the Petitioner did not timely report her employment ending, the change is considered effective May 18, 2015. As such, the overpayment period begins Sunday, May 24, 2015. Overpayment claim [REDACTED] will have to be amended to reflect that correction.

For the period of July 5, 2015 through November 30, 2015, the agency indicates that it incorrectly calculated the Petitioner's income, because it had her working 45 hours bi-weekly, instead of the 90 hours bi-weekly, that the Petitioner reported.

The Petitioner argues that it is not fair to hold her responsible for that overpayment, since it was caused by agency error. However, as discussed above, the law requires all overpayments to be recovered from the benefit recipient, even if the overpayment was caused by agency error. The Division of Hearings and Appeals does not have the authority to change or disregard the law as it is written.

### **CONCLUSIONS OF LAW**

The agency correctly determined that the Petitioner was overpaid childcare benefits from May 2015 through November 2015. However, it did not correctly determine the overpayment amount for claim [REDACTED].

**THEREFORE, it is**

### **ORDERED**

That within ten days of this decision, the agency amend claim number [REDACTED] to reflect an overpayment for the period of May 24, 2015 through May 31, 2015, only.

With regard to claim number [REDACTED], in the amount of \$517.76 for the period of July 5, 2015 to November 30, 2015, the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

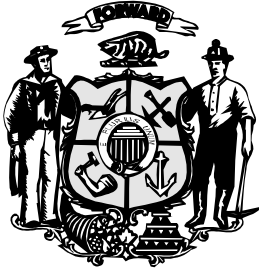
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of September, 2016

\s\_\_\_\_\_  
Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 19, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud